

DECLARATION OF TONI KNOX, LCSW

Second Declaration

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED
MAY - 5 2008
CLERK, U.S. DISTRICT COURT By _____ Deputy

I, Toni Knox, LCSW, declare as follows:

1. I am a Licensed Clinical Social Worker in the State of Texas and specialize in the practice of mitigation in capital cases, both pre-trial and post-conviction. I have received training in mitigation through the National Association of Social Workers (NASW), National Sentencing Advocates Association (NASA), National Association of Criminal Defense Lawyers (NACDL), Texas Criminal Defense Lawyers Association (TCDLA), The Center for American and International Law, and the Texas Defender Services. I have obtained approximately 100 hours in training in both CLE and CEU approved training seminars. I am also a member in good standing of the NASW, NASA, NACDL and TCDLA.
2. I received my Masters Degree in Social Work (MSSW) from the University of Texas at Arlington in 1993. At the time of my graduation in 1993, I obtained my LMSW (Licensed Master of Social Work) from the state of Texas by submitting my graduate transcript and passing the LMSW test administered by the Texas State Board of Social Work Examiners. After obtaining my LMSW, I completed three years of post graduate social work clinical experience with supervision and passed the LCSW (Licensed Clinical Social Worker) exam in 1996. The LCSW license includes the ability for private practice in individual therapy.
3. I have twelve years of experience in preparing psychosocial histories in a clinical setting, assessing family dynamics and recommending interventions, and assessing chemical dependency and mental health symptoms. I am very knowledgeable concerning the administration of psychotropic medications and their applications. I frequently attend presentations concerning current and newly introduced psychotropic medications. Since 2003, I have attended numerous seminars and training sessions concerning the preparation of mitigation, particularly in capital cases (100 or more hours).

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4. I have been appointed by the court as a Mitigation Specialist for the defense of LICH0 ESCAMILLA. I have been asked by Mr. Licho Escamilla's attorney, Catherine Bernhard, to prepare a complete social history of Mr. Escamilla and his family background to determine what possible factors, including genetic, cultural, environmental and interpersonal, could have affected his development, behaviors, social and psychological functioning.
5. It has been determined by ABA Guideline 4.1¹ that every capital case requires a qualified mitigation specialist as part of the defense team to compile a comprehensive and well-documented psychosocial history. Additionally, a complete social history would have been necessary for any mental health experts to review in order to establish a base line for Licho's cognitive functioning. It would also be needed to compare his cognitive and behavioral functioning when intoxicated to his base line functioning, to determine if intoxication exacerbated any underlying physiological conditions with psychiatric consequences or psychiatric disorders. The social history is essential in determining the presence and course of Licho's addictive disease, and/or to identify if Licho could have had any neurological deficits related to head injuries that could have influenced or controlled his thought processes and behavior during the offense.
6. Mental health and medical experts also require social history information to weigh and assess lay witness reports of Licho's behavior surrounding the offense, during interrogation by law enforcement, and during clinical interviews with Licho. A properly documented social history also offers insight into factors and circumstances that affected Licho's behavior over the course of his life and is relevant to the presence, significance, and weight of mitigating factors. Without a complete social history, it was difficult for the defense team to identify what types of experts were needed and identify the themes for the mitigation presentation. Attempting to present mitigation during the punishment phase without a complete social history is similar to

¹ ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Revised Edition, February 2003

a doctor treating a patient without assessing the patient's symptoms, medical history and or family medical history.

7. In reaching my professional opinion, I conducted interviews with the defendant, Licho Escamilla, various members of his family including, but not limited to, his father, siblings, niece and other relatives. I also interviewed former teachers/principals, neighbors and friends of Licho. The materials I reviewed are listed in the Appendix attached to this declaration. These are the kinds of materials routinely relied upon by a social worker/mitigation specialist to complete a psychosocial assessment.

Introduction

There were both biological and social factors that contributed to Licho Escamilla's development. These factors affected his social functioning, impulse control and lack of appropriate coping skills. A summary of the factors present in Licho's life, that contributed to mental health consequences, are:

- a. Licho was born in a Mexican-American family that had migrated from Mexico and had previously worked as migrant farm workers. His parent's language problems and economic status often prevented them from accessing community resources.
- b. Licho lived in a low-income, high crime area where there was increased gang activity and violence in the community, which increased his risk for delinquent behavior.
- c. Licho was a middle child, and reacted as many "middle" children in attempting to find his place in the family. He frequently took on the role of being the "problem" of the family and responsible for all bad events.
- d. Licho began drinking alcohol at age ten. By age twelve, he was smoking marijuana. Because of his family's lack of resources, he did not receive the treatment for his chemical dependency, which was frequently recommended, in his involvement with the legal system.
- e. There were many factors in Licho's environment that increased his risks for substance abuse. He did not have a structured environment, as both parents were

frequently absent. The family was poor and Licho lived in an often life threatening dangerous environment in his neighborhood.

- f. Licho often lacked proper supervision and his older brother, Jose, frequently attempted to be the parent. Licho idolized his brother, and as is common, wanted to be like him. Licho's older brother encouraged him at a young age to be involved in gang activities.
- g. Licho's father was frequently unavailable because he was either working or drinking alcohol. There were many occasions when Licho's mother had to go out in the morning and try to find where Licho's father had "passed out" from drinking excessively and bring him home.
- h. Licho's parents had very little formal education. Spanish was the primary language for both and they were frequently unable to be involved or intervene in Licho's problems at school. Licho lacked the proper encouragement and structure to function at school. Licho's school problems and behavior became a vicious cycle where he was continually moved from school to school and his behavior and academic performance continued to deteriorate. He fell further and further behind his peers, and had additional problems in attempting to adjust to each new school.
- i. Licho was traumatized at age twelve when he was beat up by an adult. His older brother, Jose Jr., got involved in an altercation with the man to retaliate for what happened to Licho. The altercation between Jose Jr. and the man escalated and Jose Jr. shot the man. Jose was fifteen at the time and sent to Texas Youth Commission. In addition to his personal guilt related to his brother being incarcerated, Licho's parents blamed him for taking Jose Jr. away from the family and he constantly felt responsible.
- j. The prevalence of both criminal activity and alcohol and drug abuse in Licho's family is common, particularly on his father's side of the family. Substance abuse was a major contributor to the family chaos, violence and lack of supervision.

Maternal History

Licho's mother, Maria Rivera, was born in Mercedes, Texas on New Year's Eve in 1943. Maria's family was very poor and worked as migrant farm workers. The family's home base was in Mercedes, but they traveled seasonally to follow the crops in other states. All family members had to work to help support the family. Maria only attended a few years of formal schooling.

Maria's father was Magdaleno Rivera. Teodora Rivera was Maria's mother. Teodora was born in April 1922 and died in December 2004.² Maria was the third child of thirteen children and she spent much of her childhood in Mercedes, Texas. Maria's mother, Teodora, was living in Mercedes, Texas at the time of her death. Maria was somewhat estranged from her family after leaving Mercedes and lost contact with many family members. There were no members of Maria's family of origin that could be located at the time of this investigation to provide detailed information about her early years. Family information for Maria, normally obtained from school and other records, was limited. Due to this paucity of records and/or family to interview, very little information reported could be verified.

Maria had her first child out of wedlock at age fourteen. Maria and Guadalupe's son, Ruben Rivera, was born in September of 1958. It is reported by family that Maria and Guadalupe married after Ruben's birth, but a confirmation of the marriage was not available. Guadalupe's family was from the Chicago, Illinois area. According to Maria's daughter, Brenda:

My mother and father worked as migrant farm workers going back and forth between south Texas and several northern states, including Ohio, Minnesota, Wisconsin, Michigan, and Chicago. At times, they would go to Florida and Alabama.³

² Teodora was still living at the time of Licho's trial. She may have been available to help locate other family members or provide additional information about Maria.

³ Brenda Hinojosa Affidavit (Exhibit 2)

Maria and Guadalupe's second child was Alfredo Hinojoso and he was born September 21, 1961. Maria's third child was Pedro Hinojosa who was born in 1964 and died in 2001. Maria's fourth child was Brenda Hinojosa who was born in November 1968 in Ohio. After Brenda's birth, the family settled down in Chicago. Brenda was told her father, Guadalupe, was killed in a car accident about six weeks after her birth, but here are no records to confirm this:

My father died in a car accident about 6 to 8 weeks from the day I was born. I am not aware of specific date or city. I was an infant at the time.⁴

Brenda cannot explain the lack of a death certificate and really has little information about her biological father. She has no idea where he is buried, where the car accident occurred or any information about her paternal family. She can only report anecdotal information passed along by her mother and other family members. She does remember that her brother, Alfredo, received some money from his father's social security because he had polio. After Guadalupe's death, Maria was left with an infant and three other young children to support on her own.

After Guadalupe's death, Maria was forced to "swallow her pride" and return home to live with her parents. Maria's spirit was somewhat broken at that point. Maria continued in the migrant farm work, but changed her home base to her parent's home in Mercedes, Texas. Maria's children were quickly integrated into the family and Maria became one of the "working parents" for the entire family, along with her father and mother. Maria's children, particularly the boys, thought of their grandfather as their father. Maria contributed to parenting the children, but was also responsible for providing for the family as she had many siblings to help support. There were times when Maria also traveled in a migrant pattern without the children in order to provide for the family. Maria did not like the migrant lifestyle and longed for her own home.

Maria later met Jose Escamilla in 1977 when they were both working in Ohio. Maria's daughter, Brenda, remembers:

⁴ Brenda Hinojosa Affidavit (Exhibit 2)

I was about 7 years old when my mother met my stepfather, Jose Alfonso, Escamilla, while in Ohio. My mother and stepfather lived together as husband and wife, but they were unable to marry legally as my stepfather had not obtained a divorce at this time. When my mother left to live with my stepfather, my brothers were older and wanted to stay with my grandfather in Ohio. My mother insisted several times, however they refused to comply. My mother insisted that I go with her due to being a girl. We initially lived in Ohio.⁵

Maria's sons had difficulty in accepting Jose as their new "father figure".⁶ Maria's daughter, Brenda, also wanted to stay with her grandparents and her brothers. Brenda was devastated by the separation from her brother and grandparents. Maria and Jose continued to work as migrant workers, but they were both getting older and wanted a better life.

Maria's contact with her family in Mercedes was hindered by the distance and money involved in traveling. Frequent trips to Mercedes were not possible. Maria's boys, although they did not want to come with her, felt abandoned by their mother. The distance between Maria and her family grew larger as the years progressed.

Maria was frequently very unhappy in her relationship to Jose because of his drinking and physical abuse. She had alienated herself from her family in Mercedes and was fearful of trying to support herself and her new family without Jose. Maria frequently told friends, neighbors, and co-workers about her problems with her "husband". Maria often lamented to friends and co-workers about Jose's problem with alcohol. The relationship between Maria and Jose was extremely volatile and often ended in Jose hitting Maria – often in front of the children. Maria also reported that Jose mistreated her and the children by taking her money and not giving her the financial resources that she needed. Luis Gonzales, Maria's co-worker for many years stated:

⁵ Brenda Hinojosa Affidavit (Exhibit 2)

⁶ Brenda Hinojosa Interview (Exhibit 2)

Maria said that her husband was not good to her and wouldn't give her money. She also told me that her husband often carried a gun. He was aggressive and frequently getting into fights.⁷

Maria had various health problems, including diabetes and congestive heart disease. Even when she had been ill and not feeling well, she had gone to work and maintained her hours. Maria had learned a strict work ethic from her family. She continued working until just prior to her death when her poor health would not allow her to work. In the last years of Maria's life, she was having multiple health problems and a few months prior to her death had been hospitalized for almost a month.⁸ Licho's sister, Maria stated:

Licho was so attentive to my mother when she was ill. He would take her food to her in bed and would try to make her feel better by brushing her hair.⁹

Paternal History

According to Mr. Escamilla, he was born in Mexico just across the border from Santa Maria, Texas. When he was one year old, his family moved to Progresso, Texas. His mother is Maria Escamilla and his father was Jesus Escamilla, who died in February 1986 of brain cancer. Jose had three brothers and one sister. His brothers are Benito, Juan, Eleizar, and sister, Francisca. Benito and Eleizar have recently passed away due to heart problems and diabetes. Jose's father worked on a ranch in Mexico for many years and his mother raised cows. His family later moved throughout the United States following the migrant worker circuit. They lived in Florida, Illinois, Ohio, Indiana, and Michigan. The family's roots were always in the Mission and Progresso, Texas area near the Mexican/ Texas border. His sister, Francisca currently lives in Weslaco, Texas.

During his childhood, he attended public school for approximately three years. Jose reports that his father drank large amounts of liquor and eventually stopped working and just drank. His mother, Maria, did not drink nor use drugs. Jose became a successful barber at which

⁷ Luis Gonzalez Affidavit (Exhibit 3)

⁸ Maria Rivera Medical Records (Exhibit 14)

⁹ Maria Escamilla Affidavit (Exhibit 4)

time he had as many as six employees in Progreso, Texas. According to other family members Jose's father, Jesus, drank excessively and was physically abusive to his wife.¹⁰ Jesus frequently left the family and Jose took responsibility for supporting and maintaining the family. Jose continued to put this responsibility to his family of origin (mother and siblings) as his first commitment. Jose maintained a very close relationship with his mother over the years and she was described as having a great amount of control over his life. Jose made arrangements for his mother to have a home prior to getting a home for Maria and his children. Jose later moved his father out and it is unclear if he died in a nursing home here or in Mexico. Jose saw his mother on a daily basis over much of his life. Near the end of her life when she was ill, Jose moved in with her to care for her. After her death, he moved into her home.

Jose met a woman named Rosa Lugo, an American citizen, in Progreso in about 1970. They married and started a family in Mission, Texas. Jose's marriage to Rosa allowed him to legally migrate and work in the United States. His oldest son from the marriage to Rosa is Santos Lugo (Escamilla). Santos is currently incarcerated for murder in the Moose Lake Prison in Minnesota.¹¹ Santos uses his mother's maiden name, rather than Escamilla because he wants no association with his father. There has been little contact between Jose and Santos over the years and as a result, Santos has harbored a lot of anger towards his father because he felt abandoned.¹² Jose's second child with Rosa was San Juanita, who was born in 1972. The next daughter from this marriage is Maria and she was born in 1973. The last child born to Jose and Rosa is Angelita who was born in 1974. There are conflicting reports about the circumstances of Jose separating from his first family. According to Rosa, there was a significant amount of conflict in the marital relationship and Jose was physically abusive to her. Rosa did not have a good relationship with Jose's mother, and his mother was a strong, guiding force in his Jose's life. According to San Juanita, Rosa's family felt that they could not allow the physical abuse to continue on Rosa and they were fearful that

10 Affidavit from Brenda Hinojosa (Exhibit 2)

11 Offender Sheet from the State of Minnesota (Exhibit 5)

12 Interviews with San Juanita Escamilla (Exhibit 6)

she would be injured or killed if it continued. Jose and Rosa were living in Florida at the time and Rosa's family, including her brother, came to get her and the children. Rosa and the children returned to Texas to stay with her family in about 1976.¹³

Jose continued to work as a migrant farm worker and later traveled to Ohio, where he met Maria Rivera. Although Rosa and Jose separated, neither obtained a divorce. Jose had very little contact with his children over the years. His daughters eventually located him in Dallas and did stop to see him several times, but he did not maintain contact with them. San Juanita was surprised when she saw her father after all the years of being separated. She remembered him being very angry and violent and this older man seemed very docile. Jose told his daughters that he had tried to locate them, but their mother had not allowed him to see them. Jose also did not send any money for the children or pay child support. Rosa did locate Jose in Dallas in about 1990 and attempted to get child support from him. Jose had to go to McAllen, Texas to appear in court. He obtained a divorce from Rosa at that time, but the settlement details were not available. Maria's daughter, Brenda Hinojosa, had to accompany Jose and Maria to McAllen to help them because of their inability to read and understand legal documents.

Family of Origin

Licho's half sister, Brenda Hinojosa, initially told me that Maria and Jose were married in 1978, but there were no records of the marriage in Dallas County or the State of Texas. Brenda later stated they had not been married. Additionally, Jose had been married previously and did not divorce his first wife until about 1990. Jose could not have legally married Maria, as he was not divorced from his first wife, Rosa. Maria and Jose lived together and represented themselves as being married, but Maria did use her maiden name of Rivera in many legal documents. On admittance to the hospital to give birth to Licho in 1982, Licho's mother initially reports her name as Maria Rivera and then Rivera is crossed out and changed to Escamilla¹⁴. Her death certificate is listed as Maria Rivera.

¹³ Interview with San Juanita Escamilla (Exhibit 6)

¹⁴ Irving Medical Records (Exhibit 1)

Maria became pregnant with their first child, Jose, Jr., in 1977 and he was born in March 1978. At that time, Maria's older boys were living in Texas with their grandparents. The family consisted of Jose, Maria, Brenda and their new baby boy, Jose. Maria's daughter, Brenda, was nine years old at the time of Jose's birth and was attending school in Ohio. Both Maria and Jose had very little formal schooling and could barely read or write in English or Spanish. During this period, there was a program sponsored by the Migrant Workers Association to help workers improve their education and obtain a GED¹⁵. Maria and Jose attended the classes in an effort to obtain their GED, but Maria had to drop out because of her pregnancy. Jose also dropped out of the program at about the same time. Jose and Maria had similar backgrounds in common because both of their fathers were abusive.

Jose, Maria, Brenda and Jose Jr. moved to Irving, Texas in 1978. Jose's brothers were living in the area and encouraged him to move there. Jose had previously lived in the area with his wife Rosa. They initially lived in a small apartment in Irving. Jose was working for a roofing company. Jose and Maria's second child, Maria Nina, was born on September 30, 1981. Licho was the couple's third child and he was born July 3, 1982. At the time of Licho's birth, Jose and Maria were living in an apartment at 509 Falcon and Jose worked for APAC Texas Bithulithic at 2321 Irving Blvd. in Dallas. Maria was initially registered as Maria Rivera, but her name was changed to Escamilla (probably so that she would be covered under Jose's insurance and Licho would have the Escamilla name.¹⁶ Licho's younger brother, Juan, was born September 30, 1983. The family consisted of Jose, Maria, Brenda, Jose Jr., Maria (Nina), Licho and Juan. The family lived in a small two-bedroom apartment and finances were tight. When Juan, the last child, was born, Maria and Jose were both over the age of 40 and Brenda was fifteen and attending high school. Maria and Jose relied on Brenda to help with the family and assist them with reading and writing tasks.

¹⁵ Brenda Hinojosa Interview (Exhibit 2)

¹⁶ Medical Records from Irving Community Hospital (Exhibit 1)

Maria spent many years working in the housekeeping department of the O'Connor Ridge Apartments in Irving. Additionally, she frequently performed additional housekeeping jobs for extra money. Maria worked full time and continued to attempt to treat Jose as the "king". In 1986, Jose started Escamilla Tire Shop in West Dallas. His children Jose, Juan, and Licho all worked at the tire shop at various times. Brenda and Nina helped with bookkeeping tasks. Jose had hoped that the boys would take over the business and continue it, but none of the boys had any real interest in maintaining the tire shop.

In 1990, Jose's wife Rosa, came forward and demanded a divorce. Rosa had been living in Mission, Texas and had been told that Jose had a "successful" business in Dallas. She filed suit to get back child support and wanted a divorce. According to Jose, a family member told Rosa in Mission, Texas that Jose was a successful business owner and she demanded a divorce in an effort to receive money. To this day, Jose has little or no contact with his first wife Rosa. On occasion, his daughter Maria from his first wife would come by his previous residence to visit. Currently, he has little or no contact with any of his children from his first wife, nor does he know how to reach them.

In addition to Licho's mother, Maria, and his father, Jose Sr., there were other family members that were present in the home. The following is a summary of the different family members that were present in the home while Licho was growing up. It might also be helpful to reference the attached family tree (Genogram) to help understand the relationship of different family members (Attachment D).

Brenda Hinojosa

Brenda is Licho's half sister and she is twelve years older than Licho. She often took more of the parental role with her younger half siblings. Brenda was angry with her mother and with Jose for many years because she had to leave her grandparents and her brothers. Brenda was torn between feeling that she was sacrificing herself for the family and wanting to contribute to be considered a part of the family. Brenda's method of coping with the stress in the family was to focus on school and later work. Brenda, with determination, pursued her education and would later be referred to as the "success" of the family. She was the first to graduate from college and she then obtained a well-respected job with the state as a probation

officer. In Maria and Jose's eyes, Brenda's only miss-step was the unexpected pregnancy, which resulted in the birth of her daughter, Rachel. After having, Rachel, Brenda was even more tied to the family to help raise her daughter while she finished school and worked. Brenda graduated from TWU with a bachelor's degree in criminal justice. She later obtained her LCDC license, Licensed Chemical Dependency Counselor, and uses her LCDC license in a second job.

Both Jose and Maria depended on Brenda to help with various problems because of her education and because she was bilingual. Brenda has been in the role of the "anchor" of the family for many years. She has spent her own money over the years for lawyers and other legal fees related to Licho, Jose Jr. and Juan. Brenda lived with the family until about 2001, when she built a house on property on Maybeth street, which was the street behind Jose's mother's home. Brenda's back yard is adjacent to the back of the property of Jose's mother. After the family sold their home on Weisenberger, Jose Sr. and various other family members moved in with Brenda in her new home. Jose Sr. later moved out to live with his mother and take care of her when she was ill. After Jose's mother died in 2004, he moved into her home.

Brenda continues to work two jobs. She arrives at her first job as a chemical dependency counselor for a methadone clinic at 5:30 in the morning and then goes to her second job at LeTot as the Intake Supervisor at about 10:00. Brenda rarely arrives home before 7:30 or 8:00 pm. She also works Saturday morning in her counseling position.

According to Licho's father, Jose, he currently has a good relationship with Brenda. She helps run the family and assists him with doctor visits. Jose feels that Brenda was not good at supervising Licho. Jose Sr. reports that when the boys got out of control, Brenda was of no influence.¹⁷

¹⁷ Jose Escamilla Interview by Joe Villanueva (Exhibit 7)

Rachel Hinojosa

Rachel is Brenda's daughter and has lived with the Escamilla family growing up. She thinks of Licho and his siblings as her own brothers and sisters. Even though, she is Licho's aunt, she is four years younger than Licho. Rachel refers to Maria as her mother and Jose as her father and Brenda as "Brenda". While Rachel was growing up, Brenda spent much of her time working and was really not available for much personal time with Rachel. Rachel understood that her mother was working, but missed spending time alone with her.

Rachel indicated the family kept very much to themselves when she was young. They didn't really have many friends, particularly Rachel and Nina, as they weren't allowed to have friends over or go outside the gate. She didn't really mind because she and Licho and the others all played together and had each other. Rachel didn't miss having friends because her family was there. She remembers when Jose Jr. started to change. He had looked out for them for so many years and she felt safe around him around. Jose Jr. then started running with bad friends and no longer was involved with the family in the same way. As they grew older, Rachel had more difficulty because she had not formed many social supports outside her family. As they all grew apart, she felt alone.

Rachel says she started "going in a direction" that her mother didn't like when she was in junior high. Brenda pulled her out of public schools and enrolled her in a private catholic school for a couple of years. Rachel was separated from the crowd that she had been hanging out with, but had difficulty at the private school because it had such a religious focus. After attending the private school for several years, she returned to normal school and it was a very difficult adjustment, both academically and socially.

Rachel doesn't currently go outside of the house very much because she doesn't feel safe. She had previously felt safe with Licho, Juan and mainly Jose. Since they have all been incarcerated, she doesn't feel safe. According to Rachel, violence and gunshots are fairly commonplace in the neighborhood.

Rachel went to Licho's trial, but the attorneys never spoke to her until the end of the trial. The attorney approached her and told her if she wanted to get on the stand she needed to go

to a certain room to wait. Rachel had no idea what she would be testifying about and was fearful. She told the attorney she didn't want to testify because she was scared. Rachel doesn't feel that Licho's attorneys were very nice to the family.

Rachel left home for a period of time and Brenda did not know where she was staying. Rachel was at home most of the time Licho was growing up and witnessed the family quarrels and/or physical abuse. Rachel currently lives with Brenda and is not employed. She is pregnant and the baby is expected in late November 2005. Rachel's boyfriend, Raul, is frequently over at Brenda's home and he will probably move in to the home prior to the baby's birth. Rachel and her boyfriend wanted to move out and get their own place, but Brenda encouraged her to stay with her for at least six months. Brenda told Rachel that she wanted the opportunity to get to know her grandson.

Maria Elena (Nana) Escamilla

Maria (referred to as Nana) is Licho's older sister and they are close in age. There was considerable conflict between Nana and her parents when she was a teenager. There was also a conflicted relationship between Brenda and Nana. Nana believed that Brenda was much kinder to the boys than her. She was in "competition" with Brenda as the other daughter. Nana remembers times that Brenda would buy the boys gifts and intentionally exclude her. Nana has her own ideas and usually follows those ideas, regardless of the pain it causes for her, the children or others. Nana was described as being very timid and shy as a child, but she grew out of that and now is quick to speak her mind about most things.

Nana had troubled teenage years in the family related to the conflict with Brenda and her father's rigid rules for the girls. She was not even allowed to attend a baby shower, as her father did not feel it would be appropriate for her. She was frequently running away at age sixteen and seventeen and finally went to live with her boyfriend when she was seventeen. Nana probably has the closest relationship with Licho. She indicates that Licho was frequently there for her to talk to when she was estranged from the rest of the family.

In August 2005, Nana separated from her husband and moved in with Brenda for a short period of time. She and her two daughters now live with her father in her grandmother's

former home. The house is extremely small, about 700 square feet and very cramped for the four of them. There is a small living area, kitchen, bathroom and two small areas for sleeping. All of Nana's and the girl's belongings are stored in her father's storage shed. Nana's oldest daughter is Angelita and she is seven and attends first grade. Her second daughter is Elena, who just turned four. Nana was due to deliver her third daughter in early November, 2005, but there have been a few complications and she is still waiting for the baby. Nana is attending a trade school training to be a medical assistant. She plans to get a job and her own place as soon as she graduates, which should be shortly. She is very dedicated to making good grades and finishing the courses.

Nana has a closer relationship to Brenda now than when she was growing up and feels Brenda is truly her sister, not her half-sister. Nana is very protective of her daughters and they are very well behaved. Nana seems to be a very caring mother and the first time I interviewed her, she was taking the girls to the zoo for the afternoon. Nana is the most "open" member of the family with encouragement.

Jose Escamilla, Jr.

Jose Jr. is the oldest son of Jose and Maria and was often the caretaker of the younger children as he grew older and Brenda was involved with school and work. Jose Jr. had closer relationships with his father's family and cousins and ran with them when he was growing up. Jose Jr. is currently incarcerated in a federal prison and did not respond to my request through his wife Elizabeth to call me collect. Jose Jr. also did not respond to my letter. All of the information about Jose Jr. was obtained from various family members and his wife, Elizabeth.

Jose Jr. grew up being fairly small in stature like his father and attempted to make up for his size by being "tough" and never backing down from anyone. Jose Jr. was a member of the Midnight Dreamers Gang in the Dallas Oak Cliff area. He initially tried to prevent Licho from being involved with the gang, but later allowed him to attend gang parties and then encouraged him to join the gang. Jose Jr. greatly contributed to Licho's gang attitude about retaliation. When Licho was about 12 or 13, he and a friend went to a party. Licho got beat up by an adult there and Jose Jr. decided to retaliate. At age 15, Jose Jr. was a gang member

and carried a gun. When he found out what had happened to Licho and saw him, he was obligated to retaliate. This altercation ended up involving guns and Jose Jr. shot the guy who had beat up Licho. Jose Jr. was arrested for this assault and sent to Texas Youth Commission. Licho, his parents and siblings, all believed that Licho was responsible for Jose Jr. "sacrificing" his life. This also created a debt for Licho to Jose Jr. that he would never feel that he could repay.

One way that Licho felt responsible to repay Jose Jr. was not to be a "punk" and never back down. He also felt responsible to carry forward the gang beliefs of "retaliation". Licho observed his parent's reaction to Jose's act of retaliation as approval of Jose Jr.'s actions and shame for Licho because Jose Jr. had to be the "man".

Jose Jr. does not have a very good relationship with his father and requested that his wife not bring him back to see him at the prison because it is upsetting for him. Jose Jr. has relayed to his wife that his father was alcoholic and frequently physically abused his mother. Jose Jr. witnessed this abuse along with his other siblings. After Jose Jr. was older, he was the first child that physically intervened when his father was hitting his mother.

Jose Jr. is currently married to Elizabeth and has a young son, Joey. Jose Jr. has been incarcerated since Joey's birth and is not expected to be released for about ten years. Elizabeth attempts to maintain contact with Jose Jr.'s family so her son will be able to know them. Elizabeth is graduating from college in December 2005 with a degree in psychology. She hopes to work with Brenda as a probation officer. Even from prison, Jose Jr. is the "man" of the family and continues to make the decisions.

Jose Jr. was not incarcerated during Licho's trial, but did not attend the trial. Brenda states that she encouraged him not to attend because she felt it would make a bad impression for the jury. Licho believes that Jose Jr. was happy to use that as an excuse. Licho harbors considerable anger toward Jose Jr. because he feels that he abandoned him.

Juan Escamilla

Juan is Licho's younger brother and has been described by many family members as the more sensitive and emotional one of the boys. Juan was described by the principal at E.R.

Martinez as being the "quiet and well-behaved" Escamilla. Juan is not married and does not have any children.

Juan is incarcerated at TDCJ, but is scheduled for release at the end of November 2005. Juan is incarcerated related to drug charges. As a consequence, Juan was not personally interviewed, but he did respond to my letter requesting information about his family. Juan wrote about his father:

He abused us when we were young also whipped us with his belt, and smacked us around. When he was really mad he would beat us down with his bare hands punching us. When we would get in trouble at school he would make us get on our knees and whip us with his belt till he got tired. I guess that was the way he thought we would learn to behave. But the way he would talk to us didn't help either. I mean he would curse us out when we wouldn't do what he wanted us to do. For example: If my father asked me to cut the grass and I forget to do it? My dad would curse me out and say things like:

*You not worth the fuck
You never going to amount to shit
You son of a bitch
Fucken Fagget*

My father would beat us all the time so we were used to it. Licho use to get beat up by my dad all the time. He got the worse do (due) to the fact Licho wasn't any good at school when we were young. He would get beat for the following reason

- 1. Having bad grades on his report card.*
- 2. Getting calls from his teacher saying Licho wasn't behaveing (behaving).*
- 3. Coming home late on a school nights (night).*
- 4. For getting dentetion (detention).¹⁸*

Juan appears to have been less of a behavior problem than Licho, but from family reports, he also came under the influence of Jose Jr. and was heavily involved in drugs. While Licho was incarcerated at TYC, Juan became closer to Jose Jr. and more involved with drugs.

18 Juan Escamilla Letter (Exhibit 8)

According to Licho's father, Juan got involved with a big drug dealer selling pot and was a bad influence on Licho.¹⁹

Early Beginnings – 1982 to 1987 (Licho's birth to five years old)

Licho was born July 3, 1982 in Irving, Texas to Jose Escamilla and Maria Rivera. Maria and Jose were living in a small, cramped apartment in Irving. Licho increased the family to six living in the apartment. Both Maria and Jose were working and finances were tight. The medical records from the hospital indicate that a follow-up appointment was recommended for Maria and Licho after his birth. Maria did not follow up probably due to her many other responsibilities and financial constraints.²⁰ Licho was a middle child, between two boys, which research has shown not to be the optimum position in a family. Licho's sister Maria states:

Licho was a middle child and seemed to always be trying to be accepted into the family. Jose was the older brother and "the man" of the family. I was my Daddy's little girl until I got older, then we were all more distant. Juan was the youngest and my mother favored him as the "baby". Licho tried to please my mother and was very close to her²¹.

Prior to Licho starting school, the family moved from Irving to the Weisenberger address in west Dallas, which was primarily a Hispanic neighborhood. The neighborhood had many poor Hispanic families with older homes and a high crime rate. Most of the houses in this area have secure fences in the front as well as the back and most have added security bars on the windows. The Escamilla family had a secure metal fence around the house to protect the family from outside dangers, but it also served to isolate the Escamilla family, which was already enmeshed.

Prior to moving Maria and the children though, Jose first built a home for his mother. Licho's siblings report that Jose's family of origin came first.

19 Jose Escamilla Interview by Joe Villanueva (Exhibit 7)

20 Medical Records from Irving Community Hospital (Exhibit 1)

21 Maria Escamilla Affidavit (Exhibit 4)

My father bought his mother a home in the area and got her settled prior to building our home. Jose frequently put the needs of his "family of origin" above his current family's needs. Securing his mother's home and getting her settled, prior to his own family, is a good example. Jose had a very close relationship with his mother and saw her frequently²².

Licho's father had very rigid, traditional views of a woman's responsibilities, which consisted of him being treated as a "king". Licho's older sister, Maria, stated:

My mother often referred to my father as "the king" and we were all expected to help take care of him. My mother would make his breakfast in the morning and pack his lunch to take with him when he worked in construction. She would then go to work and come home to have his dinner waiting for him when he came home. She would also lay out his clothes in a particular manner each evening for the next morning and would also arrange his clothes for him when he came home from work and showered. My father made the decisions and rules for the family. My mother began to work longer and longer hours and come home later and they would argue. My father would send us to our rooms, but then we would hear them arguing so loud that it would scare us. We would go out to see what was happening and would try to protect my mother. I have seen my father hit my mother with a belt and his hand. Licho, in particular, would try to shield my mother from my father. My mother would often cry and sometimes she talked about leaving my father.²³

Licho's mother and his sisters were responsible for making sure that Licho's father maintained his status as the "king" and ruler of the house. This caused increased stress for Licho's mother in trying to provide financially for the family and maintain the household with cooking, cleaning and other necessary household tasks.

The family had financial stress related to Jose's family obligations to his family of origin (mother, father and brothers), children from his first marriage and the expenses of a normal family with six children. Maria also initially tried to furnish some money to her older children that were left with her parents in Mercedes, Texas.

Licho attended the day school center at Marillac during the summer when he was five. Vickie White was completing her school internship project at the Marillac and she would

²² Brenda Hinojosa Affidavit (Exhibit 2)

²³ Maria Escamilla Affidavit (Exhibit 4)

later be his parole officer. She remembers that the other children often taunted Licho because he was unkempt and was not wearing underwear. Vickie stated:

He would come to class without underwear and other children could tell he didn't have underwear on. When they all began to play, his penis and other private parts would show because he wasn't wearing underwear. The other children were constantly harassing and laughing at him because of it. I felt sorry for Licho because the other children would constantly provoke him by taunting and laughing at him. In addition to feeling sorry for Licho, I also realized that the taunting by the other children contributed to Licho's acting out. Licho used nap time as a time to attempt to retaliate against the children. He would step on them while they were lying on the mat. Eventually, to keep the peace, Licho would go to the play ground while the others were napping so that he wouldn't disrupt them. Licho did come to school in an unkempt condition. In addition to not wearing underwear, he was frequently dirty. He would have obvious dirt on his face. So as not to embarrass him further, I would wait until nap time and then use a towel to wipe the dirt off Licho and give him clean underwear to put on. I and others attempted interventions to try and help with Licho's acting out by giving him some leadership roles. He did seem to respond to these interventions, but he continued to have behavioral problems. At age five, Licho, would frequently talk about his brother being in a gang, and Licho was very proud about it. He would tell other adults and children that his brother would beat them up if they "messed" with him. I remember one of Licho's female school mates as saying very seriously "Licho will be in a gang".²⁴

Licho, under his brother's influence and the family value of "pride", was beginning to embrace the "retaliation" mode. He would frequently retaliate when the other children were not expecting it. Licho also made frequent threats that his brother, Jose Jr., would beat them up.

Licho's father, Jose, later found out about Vickie's attempted intervention, and was angry.

Vickie White stated:

Licho was from a very traditional Hispanic family and his father was very proud and did not believe in help or intervention from others. When it came to Licho's father's attention that I had bought underwear for Licho, he was angry and sent his wife, Maria, to speak with Sister Rose Ann about it. Sister Rose Ann spoke with me and informed me that

²⁴ Vickie White Affidavit (Exhibit 9)

it was upsetting the family that I was buying underwear for Licho so I stopped. I only talked with Licho's mother one time that I remember and she was very quiet. I wasn't sure at the time if she didn't really understand what I was saying because of the language or if she understood and just had no response. It was difficult to assess the communication process with her. I don't believe that Licho ever had a chance in life because of the influence of the gang members and his brother's involvement with a gang and his influence on Licho. It has been my experience that a child growing up in that environment of guns and violence cannot escape without a major intervention.²⁵

Sister Rose Ann Aguilar was in charge of social services for the Catholic Church and the day care center at Marillac Center where Licho stayed as a child, along with his siblings. Sister Rose Ann reported that the church had frequently helped Licho's family, through his mother, at Christmas for many years, but Licho's father had not been aware of the help. Sister Rose Ann remembered Licho as being very attention seeking.

Although the Escamilla's were friendly to neighbors and others, they were not allowed into the inter-sanctum of the family. As a result, because Licho's mother and father were both working long hours, Maria's oldest daughter, Brenda, was responsible for caring for the children. Brenda was a teenager herself and dealing with her own adjustments and problems and was frequently unable to provide nurturing and consistency to Licho and his siblings. Maria depended on Brenda to be an anchor for the family, but because Brenda had been removed from her brothers and grandparents and "added" to this new family, she had her own problems and issues that weren't being addressed. As a result, although she attempted to care for her younger brothers and sisters, she was not equipped to furnish consistency and nurturing that she had missed herself.

When Licho was about five, under Brenda's care while his parents were working, he went next door and was bitten by a mother dog with puppies. He had a "chunk bitten" out of the calf of his leg and was bitten on the hands. Brenda then had a "bleeding" child and no one to help her. She attempted to call her father, but couldn't reach him or her mother. Rather than break the family rule of not involving others, she started carrying Licho, who was bleeding

25 Vickie White Affidavit (Exhibit 9)

profusely, toward her father's shop. Someone did eventually help her by taking her and Licho to Jose's tire shop. Licho's father then took him to the hospital. Licho and his siblings did not receive very much attention during the day because no one was available to provide it and they relied on each other.

Brenda became pregnant at age 17 and gave birth to her daughter, Rachel. Brenda wanted to continue school and would finish high school and go on to college. Brenda was working and attending school and had little time for her own daughter, Rachel, and her siblings. Rachel's father later moved out of state and had little to no contact with her.

Jose and Maria had minimal involvement with Licho's schools in the early years as they were busy working and both had very little formal education. The interaction with the school system from a "communication" standpoint was difficult. Licho started first grade and managed to scrape by with little to no assistance from his parents or Brenda. In second grade, Licho had a teacher who was committed to making everyone use their right hand. Licho was left handed and struggled with the problem of being forced to write with his right hand. The teacher also required that all activities at school be done with Licho's left hand or he received a zero. As a result, Licho was retained in second grade. This contributed to Licho's feelings of insecurity and feelings of not being competent. Because Licho's parents were not involved with the system, they were not able to intervene. Licho's younger brother, Juan, was also left handed and suffered the same problem with this teacher. He also had to repeat second grade with the same "rigid, older, white" male teacher. It was not discovered until other children had told their parents about this practice and the teacher was eventually fired.

1988 to 1990 Early Childhood (Age 6 to 8)

After repeating second grade, Licho was nine years old in third grade and most of his school mates were younger. Licho did well in third grade as he had repeated second grade. By the time Licho was about ten or eleven, Brenda was away from home attending college and Licho's older brother, Jose Jr., had taken on much of the responsibility for monitoring Licho, his siblings and niece. The children spent little time with their father as his drinking had

continued to escalate and frequently contributed to the marital conflict between Jose and Maria. This conflict between Maria and Jose frequently involved domestic violence, which Licho and his siblings witnessed.

Although it was unrealistic to expect Jose Jr., as a parentified child to be "the man of the house," Licho's parents invested in Jose Jr. the authority to manage the children as he saw fit. Licho's older brother, Jose Jr., attempted to keep his siblings and Rachel out of trouble, attending school and away from people who took advantage of them, but he was young and ill equipped to be a substitute father. Licho's mother was too preoccupied and exhausted from her responsibilities as the major breadwinner and her household responsibilities to monitor the children.

Licho's father was arrested in 1989 for being intoxicated and carrying a pistol. Jose's frequent behavior included nights that he stayed out all night because he had passed out in his truck. Licho's niece (Brenda's daughter) Rachel remembers many occasions when Jose would stay out drinking and then wouldn't return home. Her grandmother, Maria, would get up in the morning and cook them breakfast as though nothing was wrong. Maria would then go out and look for Jose's truck because he frequently passed out in the truck, in or around the neighborhood, or at his tire shop. She would then come back to get Jose Jr. to come with her to drive home the truck and bring Jose Sr. home. Jose Sr. would usually drink out somewhere and then come home drunk or he would keep his beer outside and drink there.

In July, 1990, Licho was "reported hit by car" on his bike and taken to Irving Healthcare System²⁶ (no head injuries noted). The report given to the hospital is that Licho was hit while riding his bike. Licho reports that he was trying to hang onto the back on his mother's car because he didn't want her to leave without him and she accidentally backed over him.

26 Medical Records – Irving (Exhibit 1)

1991 to 1994 Licho's Adolescence (Age 9 to 12)

Licho's behavior and performance at school had begun to deteriorate. He was being negatively influenced by inadequate supervision at home, his father's drinking, and the physical abuse of his mother. There is considerable research on the negative affect of domestic violence in front of children. The conflict between his father and mother had continued to increase. Witnessing their father hit their mother and feeling unable to protect her caused the boys, in particular, to feel increasingly helpless and angry. During this period, Licho's father's increased drinking caused him to frequently come home and be angry at either Maria or the children. Jose and Licho seemed to take the worst of the hitting. Licho's brother, Jose, was in the position of "watching" over his siblings during the day, then his father came home and he continued to try and protect them by taking on Jose Sr.'s physical abuse.

Rachel Hinojoso was raised as a sibling with her nieces and nephews. They didn't really have many friends and she and Maria weren't allowed to have friends over or go outside the gate. She didn't really mind because she and Licho and the others all played together and had each other. Rachel didn't miss having friends because her family was there. Jose became more disengaged from the family and more involved with negative peers.²⁷ In addition to Licho being exposed to the frequent violence and crime in the neighborhood, family arrests and incarcerations were increasing.

Licho and his siblings had grown up believing that their mother and father were married. But his father's first wife, Rosa, took him to court in 1990 to collect back child support and Jose was forced to obtain a divorce from her. By that age, it was upsetting for Licho to discover that his father had not legally married his mother and had abandoned his first family. His mother had also abandoned her first family. This caused Licho and his siblings increased fear of being abandoned like the "first families".

²⁷ Rachel Hinojoso Interview (Exhibit 10)

When Licho was in the sixth grade his best friend, Jo Jo Cavillo was killed in a car accident. Jo Jo's sister was paralyzed from the same car accident. Licho was devastated by his friend's death, which increased his dependence on his brother Jose Jr. Licho was influenced by considerable negative and violent behavior from his older brother and paternal cousins. Licho idolized his older brother, Jose, and wanted to be like him. Jose had become involved with a gang, the Midnight Dreamers, and Licho was being drawn into the gang activity. Initially, he was almost treated as a "mascot". Licho flourished receiving the attention that he had so desperately sought at home from his older brother and the gang.

A neighbor, Lucinda Rogers, described Licho's mother, Maria, as being a hard worker and rarely seeing her outside. Lucinda noticed that Maria went to work and then she came home and had work to do at home. Lucinda frequently saw Licho's father outside drinking and she knew that he had allowed the boys to drink around the house at a young age.

As he continued to be affected by this negative influence, in addition to the loss of his best "school" friend, Jo Jo, Licho became less motivated to go to school and began his pattern of truancy. Because of Licho's lack of supervision from his parents, truancy was easy. Both his parents were gone to work by time he went to school and it was easy for him to skip school with friends or his brother. Licho had started drinking and smoking marijuana. Maria and Jose were both working long hours and Licho had little supervision.

In January, 1991, Licho's father, Jose, was arrested. He was found by the Dallas police at 1:30 in the morning passed out from alcohol intoxication behind the wheel of his truck. The police found that Jose was carrying a 22 Caliber Derranger Pistol in a knife holder attached to his belt. The pistol is loaded with five bullets and an additional four bullets are found in Jose's front pocket. He is charged with PI and UCW. In the meantime, Licho's paternal uncles and cousins are frequently being arrested for various incidents. Licho's cousin, Julian Escamilla, is arrested for theft over \$750. He received 4 years probation.²⁸

28 Criminal Records – Dallas County (Exhibit 24)

1995 to 1999 Licho's Teenage Years (Age 13 to 19)

By age thirteen, Licho was regularly going to gang parties with Jose. Jose was encouraging Licho to become increasingly violent and model "gang behavior". Licho continued to witness violence at home. At this point, Licho had been drinking several years and was drinking at these gang parties with his brother. Licho and his siblings felt fairly comfortable drinking and smoking marijuana around the house. Licho had already started his downward spiral with increased truancy at school and increased involvement with the Midnight Dreamers. Licho was beginning to recruit his friends for a "pee wee" Midnight Dreamers' group, which they called the Ledbetter 12. Licho and his friends had difficulty trying to organize their own gang at their young age. Licho's older sister, Maria, stated:

My older brother, Jose, was not a good influence on Licho and Juan. Juan was much more sensitive and emotional than Licho and Jose, and rarely got into trouble at school. Initially Jose had encouraged Licho to be tough and be part of the gang. After Licho was sent away to TYC, Jose started trying to pull Juan into the same problems. Juan seemed to do much better when he was not involved with Jose. I remember how Jose treated Licho. He would play this game where the guys would all stand in a circle. He would then tell Licho to "kick his ass" and Licho was expected to fight that person and win. If Licho didn't win, Jose would call him a punk. I remember one time when Jose wanted Licho to beat up his own friend. Licho didn't want to have to beat him up and wanted his friend to just leave.²⁹

Licho and his brothers continued to witness their father's threatening assaults on their mother and were unable to protect her from harm. Licho's sister, Nana, remembered that when they were "little," he and his brothers "tried to protect" their mother, but they were too small and scared to stop his attacks. Graphic images of Jose's assaults on his mother were indelibly stamped on Licho and his sibling's minds. Jose Sr.'s chronic violence and abuse had serious psychological effects on Licho and his siblings. Licho lived in a constant state of hyper vigilance and hyper arousal, ever on the lookout for his father's assaults.

Licho's neighbor, Sara Barajas, had often played with Licho and his siblings over the years.

As a child, I played frequently over at the Escamilla's house and with their children, including Licho. I spent many hours outside playing with them. As

²⁹ Maria Escamilla Affidavit (Exhibit 4)

children, we loved to build forts out of anything that we could find and played all kinds of games. Licho was great about helping to fix my bike. He would often give me lifts to school or take up for me if someone was picking on me at school. Licho loved to play with the younger children. I remember once when it snowed and Licho was determined that we were going to build a snowman. There wasn't much snow, so he had to get it from underneath cars and wherever he could find it. He kept encouraging the younger children that they could build it and got snow for them.

I also remember that when Christmas came around, Licho would always put the lights up the same day I put them on my house. He liked to compete and see which house was decorated better. One year, he spelled Escamilla on their gate with Christmas lights. You couldn't really tell what it was, but his Mom knew and she liked it, so that was good enough for him. He spent four hours that night outside in the cold without any gloves and a sweater on. I remember laughing at him because he didn't want any help at all, but you could tell he was struggling with the lights. But, it was all worth it for him at the end because his Mom loved it.³⁰

Licho starts out 1997 by enrolling in the JAMS for gang intervention. In February 1997, Licho was re-enrolled at the alternative school (School Community Guidance Center (SCGC)). Licho was scheduled for a court appearance in February, but neither of Licho's parents was available to attend court or take him. Licho and his family continued to send the message to Juvenile that they had no structure and would be unable to follow the probation plan. There are other stressors in the family. Licho's cousin, Eliezar has been arrested and charged with aggravated assault with a deadly weapon and murder. Eliezar drove into a crowd of people and Jose Perez is critically injured. Eliezar's father, Juan, tries to talk his brother, Jose Sr., into having his son, Jose, Jr., take the blame for this incident. This causes family conflict between Jose Sr. and his brother, Juan. The Escamilla family is building a bad reputation in the police department. In late February, Licho is schedule to start YIPE for drug counseling. YIPE is the recommendation, but day treatment is not available and Licho must be put on a waiting list.

Without any drug treatment, Licho continues to do poorly. Licho is detained again by the Juvenile Department in March 1997 and later released to his father's care with the agreement

³⁰ Sara Barajas Affidavit (Exhibit 12)

they will both attend the "group sessions" at the YIPE program. The YIPE program is an out-patient less restrictive treatment option. Day treatment is still the recommended treatment for Licho, but it is still not available. Licho tests positive for marijuana and he is still smoking marijuana and drinking.

Anyone involved in treating chemical dependency acknowledges that it is very difficult, if not impossible for recovery, if the client is not in a sober environment. Drug use and drinking is going on all around Licho. It is difficult for an adolescent substance user to be strong enough to say no to his brothers and friends who are smoking and drinking. Jose Sr. and Licho did attend one group session of the YIPE program. Jose Sr. was willing to come once (under duress), but does not intend to return because he doesn't believe in other people telling him what to do. Licho continues to not comply with the probation plan and in June 1997 is placed at Dallas County Youth Village.

Licho had his fifteenth birthday while incarcerated at the Dallas County Youth Village. The Escamilla family continues to be in a state of turmoil. Jose Jr. had been released from TYC and he had been involved with the gang and selling drugs. Jose Jr. had been hanging out with his cousin, Eliezar, who already had a manslaughter charge pending and then Eliezar was arrested for burglary. In November, Jose Jr. was arrested for possession of a prohibited weapon. Meanwhile, Licho was going to classes at Dallas County Youth Village and is receiving education about chemical dependency, but was still not learning needed coping skills to help to start and maintain the recovery process. Licho's behavior improved because he was in structured environment.

Licho had been writing to a girlfriend, Vicky Gonzales. Vicky had goals for the future and had plans to attend college. She encouraged Licho to stop getting in trouble and getting arrested. Licho did have some determination when he was released from Dallas Youth Village in June 1998. After a year in a more structured environment, Licho was more hopeful that he could continue in the right direction, particularly because he wanted to be with Vicky Gonzalez.

It is the summer of 1998; Licho is out of Dallas Youth Village and back home. Licho gets to celebrate his sixteenth birthday with his family and friends. He is immediately exposed to the same negative environment at home. Licho's brothers, friends and neighbors continue to smoke marijuana. Licho is talking with Vicky on the phone all the time and feels this may be his first love. Vicky's family does not realize that Vicky is involved with Licho. Licho wanted to attend the same school as Vicky so he can be close to her. Vicky attends school at Nimitz High School. By September, 1998, Licho tested positive for marijuana on a drug test administered by the West Dallas Community Center – Positive Directions. Once again, Nora Moa, Licho's probation officer recommends that he participate in the YIPE Day Treatment Program, but there continues to be a waiting list for treatment and it is not available.

Licho had convinced Jose and Maria that if he could change schools and get a new start, he could do better. Changing to a different school and environment seems like a good idea to Jose and Maria. Maria still had friends from the Irving neighborhood where they had lived previously. A friend of Maria's, near Nimitz, agrees to let Licho use her address so that he can enroll at Nimitz. Licho was signed up for school at Nimitz and his family was hopeful that the new environment will make a change. Licho began the new school year at Nimitz, but his main focus was to spend as much time with his girl friend as possible.

Licho was continuing to report to probation and he tested positive for marijuana again. Probation recognized that Licho continued to need treatment for his chemical dependency, but the decision has been made to just have Licho attend school at Nimitz until drug treatment is available. This is a great example of a "set up for failure" for Licho. Licho immediately gets off to a bad start at Nimitz. He has decided to walk his girl friend, Vicky, to class, but was unfamiliar with the school and gets lost. A teacher saw that he was lost and tardy to class and attempted to reprimand Licho. Licho made another of his impulsive, poor decisions and decides that he would just outrun the teacher and get to class in time. This decision ended with the same result as many of Licho's other impulsive decisions. Licho also gets in trouble for using foul language. Based on the language he heard at home, recognizing foul language continued to be a learning experience for Licho. What both TYC and Nimitz are designating as "foul" language is every day language at the Escamilla house. Licho is suspended in October 1998 for using foul language and later expelled. Licho's

probation was extended in September because Day Treatment for substance abuse was still being recommended for Licho and was still not available. Licho continued on his self destructive path with drugs, and juvenile continues to **recommend** treatment, but it is not available.

After being expelled from Nimitz, Licho was again in that "no win" situation of needing to be in school to meet his probation. He was unable to function at school because he continued to use drugs and no treatment is available. This time, Licho was referred to an Irving Alternative School. Licho was not anxious to attend the alternative school again and attempted to register at Pinkston High School in November, but they would not allow it as he had been referred to an alternative school. Licho is headed in that downhill cycle again. Probation required Licho be attending school, but Licho couldn't find a school to attend. He did not report to his probation officer because he knew he would be in violation. Eventually, since Licho was not attending school or reporting to his probation officer, a bench warrant was issued. A letter was mailed to Licho and his family, but they do not respond. Jose Sr. and Maria may or may not have been aware that Licho has been expelled or that a bench warrant had been issued.

Licho continued using that "Sixteen Year Old Judgment" in deciding that he would not go to school or report to his probation officer. Unfortunately, there was also no intervention by Jose Sr. or Maria. This was just one of many risk factors for Licho. Since Licho's parents do not read and write and are ill equipped to deal with or obtain community resources, they do not intervene. Maria and Jose Sr. were older and had less energy to be involved. Licho's parents were unable to provide a sober living or positive living environment for Licho. Licho parents were not financially able to provide the recommended treatment for Licho and depended on community resources that were not available.

In January 1999, Licho is continuing to use drugs and alcohol and is not attending school. He is living on "borrowed time". Licho's friend Raul Reyna got a new four-wheeler and brought it over to show Licho. Licho was anxious to try it out himself and drove down Weisenberger to Bernal. Near the intersection of Weisenberger and Bernal, the ER Martinez

School was located. Licho was driving by the school and decided to try the off-road abilities of the bike at the far end of the school. Mr. Adolf Yanez, a former PE teacher, had come out of retirement to be an assistant principal at ER Martinez. Mr. Yanez saw Licho driving around the school and was infuriated. Mr. Yanez didn't like it when any of those hooligans hung around the school. He planned to get rid of Licho in short order. He goes out and yells at Licho to go away, but Licho is driving on the street and doesn't plan on taking orders from Mr. Yanez. Sara Barajas says that Mr. Yanez was not very well liked by many students at the school.

Mr. Yanez wasn't very nice to students. I can remember times when it would be raining and we would try to get out of the rain under a cover at the school. Mr. Yanez would make us get back in the rain because we were on school property.³¹

Sara also witnesses the incident between Mr. Yanez and Licho:

At Licho's trial, I testified about an event that I witnesses in front of the E R Martinez elementary school in January 1999. I had gotten out of Nimitz High School early because of a pep rally and had taken the bus to across the street from the ER Martinez elementary school. I was waiting for my friend, Lacy Tijerina to arrive on the bus from another school so that we could walk home together. I saw Licho driving a three wheel vehicle that he had. I saw Mr. Yanez shouting at Licho to get away from the school. Licho was upset because he wasn't on the school property. Licho and Mr. Yanez were arguing and then Licho turned the vehicle to drive away. Mr. Yanez picked up a rock and threw it at Licho and hit him in the head. Licho drove away and I didn't see him for a few minutes. Then I saw him walking toward the school carrying a tire iron. I could see that he had been bleeding and he had put two band aids on the back of his head. When Licho approached Mr. Yanez with the tire iron, Mr. Yanez was taunting him that he wasn't man enough to do anything with it. Mr. Yanez kept saying that he couldn't do it. Licho was swinging at Mr. Yanez and he was moving out of the way. Licho did hit Mr. Yanez with the tire tool on the arm and then as he was running away, Licho stopped and hit the windshield of Mr. Yanez's car and broke the windshield. By that time, my friend, Lacy, had arrived and Licho came running toward us. Licho ran away and went to a friend's house.

Licho drove back to his home, where Raul was waiting for him to return with the four wheeler. Raul initially believed that Licho might have had an accident on the four wheeler

³¹ Sara Barajas Affidavit (Exhibit 12)

because he had a cut on his head and he was bleeding. Licho was hurt, but his main driving feeling at that time was anger. Licho explained that Mr. Yanez hit him in the head with a piece of wood. Raul attempts to help Licho stop the bleeding. Raul believed that Licho needed to go for stitches, but Licho doesn't want to go to the hospital. He and Raul stopped the bleeding and attached a couple of band aids. Licho decided that he would take matters into his own hands and encouraged Raul to go back to the school with him. Raul recognized that no good would come of it, but was unable to dissuade Licho. Licho grabbed a tire iron and returned to the school. This whole experience helped reinforce in Licho's mind that everyone is not equal.

Licho is detained again and had tested positive for marijuana. In February, 1999, Licho was assessed for chemical abuse and Day Treatment was recommended by the social worker, Alison Statman.³² During an assessment when Licho was asked about any medical problems, he reports that he had an accident on a four-wheeler a couple of weeks prior and had to be treated. Licho had decided it would be best to leave out any details of getting hit in the head by Mr. Yanez because it would also reveal his behavior to Mr. Yanez. On a psychological evaluation and testing, Licho scored in the average range of non-verbal intelligence as assessed by the Culture Fair Intelligence Test. He scored 99, which put him in the 48th percentile. Licho's personality tests revealed that Licho was heavily influenced by peers. It also revealed that Licho perceived discipline from any authoritative figure to be a criticism of his self worth and reacted strongly. This was accurate assessment, and the Yanez incident was a perfect example. When Licho perceived that he was being criticized, he had frequently engaged in inappropriate behaviors (such as hitting Mr. Yanez with a tire tool). Licho has been referred to Chemical Dependency Day Treatment. His parole officer contacted Marion Harper at the treatment center and was informed that it there continued to be a waiting list for treatment.

Licho was reporting to his parole officer and by March 1999, his drug screens were showing negative. Licho had also enrolled in DallasCAN Academy, which was a program to help

troubled youth complete school. He receives two perfect attendance certificates for the first two weeks. Licho was trying to make it work, but those same negative influences started again and he started skipping school. There were strict rules about attendance at DallasCAN, so within a week, he was dropped from DallasCAN. Licho and his father were scheduled for a hearing in April 1999, because he was again in violation of his probation. The judge at the hearing decides that Licho cannot make it in his current environment, as exhibited by his inability to stay in school. Licho was detained again for probation violations and sent to TYC. During this period, Licho's mother's health has continued to decline with her diabetes and other complications.

In April 1999, Licho was sent to the TYC Marlin Assessment Unit to be assessed once again. There are so many assessments, but never any follow-up treatment for what is assessed. Once again, the bureaucracy grinds through what their policy dictates, but there is only a policy to assess – not to treat. In the TABE tests, Licho's scores reveal that he was on a 6th to 7th grade level, which was embarrassing for Licho. The Marlin assessment unit sends a memo along with Licho stating:

*Due to limited resources in the chemical dependency program at MOAU, this youth has been transferred without a clinical interview by a LCDC. It is recommended that a chemical dependency assessment be completed upon placement. This would be more cost effective and efficient than pulling from the resources in the field as we have done in the past to complete assessments. If you have any concerns about the substance abuse diagnosis, please refer to the psychological evaluation.*³³

Licho was transferred to the Rio Grande Marine Institute in Los Fresnos, Texas, where he was enrolled in the 9th grade. Licho wrote a letter to Brenda saying that he is missing the family – he doesn't know what they will do without him. When something bad happens – who will the family blame?³⁴ In this letter, Licho clearly acknowledged his “role” as the family scapegoat.

32 TYC Records, Bate Stamped Page 190 (Exhibit 13)

33 TYC Records, Bate Stamped Page 203 (Exhibit 13)

34 Licho's letter from TYC (Exhibit 25)

On December 9, 1999, Licho's mother was hospitalized. She remained in the hospital for several weeks. Licho is given a four day furlough so that he can see his mother. Licho spends the entire time staying at the hospital with his mother, even sleeping there. Maria was released from the hospital on December 22, 1999, but is too ill to return to work.³⁵

Licho Turns 20 and his Mother Dies (2000)

In January, 2000, Licho is preparing to leave the Rio Grande Institute. The case manager at the Rio Grande had been writing frequent letters to Jose Sr. (which he cannot read) requesting him to participate in Licho's discharge planning, but the family has bigger problems with Maria's poor health. The case manager had recommended that Jose Sr. arrange some counseling sessions for himself and Licho. At the end of January, Licho was released on parole to the Dallas area, where he was expected to obtain a job, work on his GED and live with his family. Licho was trying to comply even though he was back in that same environment. He looked for jobs, while working with his father at the tire shop, going to GED classes and attempting to complete his community service requirements. Licho was under a curfew to be home, but the home environment is almost as dangerous as the outside environment, and there is no supervision to enforce the curfew.

At the end of March 2000, the police come to the Escamilla's house on 4045 Weisenberger looking for a friend of Licho's, Chris Garza. Licho's mother answered the door. She informed the police that Chris was not there. She invited the police in to check for Chris. She doesn't believe the family has anything to hide and Chris was not there. The police were doing a quick look through the house and what do they find in the bedroom? They find Jose Jr. in the bedroom with approximately 250 grams of cocaine and a scale. Jose Jr. is arrested.³⁶

Licho was trying to maintain and was attending his GED classes, but was very nervous about taking the GED test. He was scheduled to take the GED by June 30, 2000. Licho is again

35 Medical Records – Maria Rivera (Exhibit 14)

36 Arrest records – Jose Escamilla, Jr. (Exhibit 15)

smoking marijuana and believes he will not pass the GED. On June 26, 2000, Licho reports to his parole officer and he tested positive for marijuana. Not only was he positive for marijuana, but he had a rolled joint in his pocket. The parole officer also talked with Licho's father who told her that Licho had been smoking marijuana all the time. Licho was detained and his court date was scheduled for July 2000. Licho is sent to the Marlin Assessment Unit until his court date.

No family members (including his father) showed up for Licho's court date in July and he took a plea and was transferred to Coke County Juvenile. Licho was not doing well at the facility. Licho knew his mother was ill and he still had not received any treatment for his substance abuse and dependency and it had not gone away. On September 14, 2000, Licho met with his case manager at Coke County and reviewed his treatment plan needs and the recommendation continued to be that he needed Substance Abuse Treatment. There were no family members present at the review and no parent signature.

Licho had talked with his mother on the phone and promised her that he was going to do better. They talked about his plans to work after release and discussed the need for him to have transportation. Licho's mother promised him that she would help him get a car. Licho knew that his father has previously helped Jose and Juan get a car, but had not offered to help Licho, but he was comforted that his mother was there for him.

On September 29, 2000, Licho's mother had a heart attack at home. She died by the time that the ambulance arrived, but they take her to the hospital and she was maintained on life support. The family and friends of Maria had been notified and were coming to the hospital to say their goodbyes. The doctors had advised that it would be useless to maintain Maria on life support and plans were made to disconnect the life support on October 2, 2000 at 10:00 in the morning. All of the family members would be present except Licho. Licho had not even been notified that his mother had a heart attack and is on life support. Brenda describes her mother's death:

In September 2000, my brother Pedro Hinojosa died. In approximately two weeks later, my mother had a heart attack in September 29, 2000, just a few weeks before Licho was scheduled to be released from TYC. After her heart

attack, she was hospitalized and placed on Life Support for a few days, but the doctors notified the family that she needed to be removed from life support due to no hope for recovery. The physician had the Board Administratively decide to stop life support and she died immediately afterwards October 2, 2000.

I had to call TYC to inform my brother and he broke down emotionally. He was released in time to return home for my mother's burial. The family was devastated by my mother's death, but particularly Licho. In addition, to the normal grief that we all felt, Licho felt guilty that he had not been there when she died. He also felt guilty because of the heartache he had caused related to being incarcerated. After my mother's death, my stepfather, Jose, was extremely depressed and his functioning ability was very poor. The family, particularly my stepfather and the boys, were lost without my mother.

The family was really in a crisis time. My stepfather was not functioning because of his depression and was encouraging Licho and Juan to take more responsibility around the house and mostly the business. My stepfather would not talk to no one and would hardly eat. My. stepfather would not talk to no one would just get home, get up take a shower and go to work. My brothers were also numb and would only manage what they could. My father's health started to get worse. He no longer wanted to work at the tire shop due to everyone coming around and asking him, how he was. My father managed to get a part-time at Bethada Counseling Center as a transportation officer.³⁷

The juvenile department decided to allow Licho to discharge a few days early from the facility to return home for his mother's funeral. Licho's mother had been available for visitation at the funeral for friends and family. Licho's sister, Brenda, did make arrangements to hold the visitation open until Licho could arrive on October 5, 2000. They then proceed with the funeral and Licho's mother is buried. Licho lost the only person that he believed truly loved him and feels he probably caused it because he was not there for his mother. Many family members reported Maria to be the glue of the family. Licho's brother, Juan, stated:

My mother always loved us. She worked and cooked for us every day of her life. She worked as a house cleaner – cleaning apartments at O'Conner Ridge Apartments 6 six days a week from 8 in the morning till 4 o'clock in the afternoon. Then (she would) go home clean the house and cook for us. We all loved our mother. She was sick – diabede's

37 Brenda Hinojosa Affidavit (Exhibit 2)

(diabetes), high blood pressure. When she died it tramatized (traumatized) all of us. Licho was locked up at that time when she died. He had a bunch of problems at that time trying to corp (cope) with her passing away. He had a (an) angerme (anger management) problem after that. I did too. I started to drink a lot after that.³⁸

The situation at the Escamilla house was absolute chaos. Family had come from out of town for the funeral and many were staying at the small house on Weisenberger. Jose's family members, rather than bringing food for the family, were showing up expecting to be fed. Licho's older sister, Nana, has been living with her children's father for many years, and he was not well liked by the family. It had been arranged for him to be one of the pallbearers at the funeral, but he didn't show up for the funeral, which caused additional confusion and stress. This caused additional pain for the family and they later informed Nana that he is not welcome in the home any longer. This conflict with Nana contributed to the family crisis. In addition to his own grief, Licho continued to reel from the crisis with the family.

Licho was not allowed time to grieve for his mother because he had parole agreements to keep, which did not go away because his mother died. Licho was trying hard to abstain from marijuana because he does not want to test positive, but he replaced the marijuana with alcohol and each night he "numbed" himself from the pain and hurt with alcohol. Licho was working with his father at the tire shop and by November 2000, he was working for the Brim Laundry. He was putting forth the front to his parole officer that he is complying, but Licho was still being influenced by the gang and his environment.

2001 and 2002 – Downhill Cycle

In February, 2001, Licho is treated at Parkland for a gun shot wound. He just happened to catch a stray bullet at a gang party. Licho does not even stay the night at Parkland because he needed to report to his parole officer the following day. He continued to replace marijuana with alcohol. He was working with his father at the tire shop and continued to look for another job. Licho had poor work skills because he had only worked for his father and the rules are different than a regular job. Licho had worked at several different jobs, but

³⁸ Juan Escamilla Letter (Exhibit 8)

he did not last long at any of them. He was also being distracted because family and friends are selling drugs for a great profit. It was easy work and the pay was good. In his eighteen year old brain, Licho continued to weigh the pros and cons of the easy money. Licho asked his father to help him try and get a car, but Jose Sr. was not willing.

Licho's brother, Jose, is arrested in May, 2001. Brenda describes the family situation in 2001:

During that same time period, my sister Maria Elena Escamilla, separated from her live in boyfriend and returned home with her 2 year child and pregnant with her second child. When she returned home with her first child, she was placed in Licho's bedroom. He was upset about his room being taken and began to spend more time away from the family.

Licho had begun drinking more during this period and my father was talking to him because he was worried that he was drinking too much. Licho seemed lost after our mother died. He didn't seem to have a role in the family any longer. His role in the family had been the happy one, the one that made everyone else laugh and cheer up. He was no longer in a position to do that because he felt so lost and sad. On several occasions after my mother's death, Licho expressed feelings of hopelessness about the future. At times Licho expressed he wanted to die, he had no reason to live. His condition worsened when he had been drinking and he would cry for my mother. During this time it he was the most lost of all the kids. He felt she died due to his failure to make her happy. Mother's Day of 2001 was extremely hard for him and the family. We all went to her grave site to pray a rosary.

In September 2001, Licho was arrested for stealing a car in Tarrant County. He and a friend take the car while it was left running at a car dealership. The police were immediately notified and a police chase by the Tarrant County police ensued. There was a later evaluation and investigation regarding the Tarrant County police's behavior in this car chase. Now, Licho was unable to report to his parole officer because he was incarcerated in the Tarrant County Jail. On September 12, 2001, Licho was placed on probation in Tarrant County. Licho was then released from the TYC system and placed on adult probation. Licho was then arrested a few days later in Dallas County for tickets.

On September 19, Licho reported to his Tarrant County Probation officer. A few days later, Licho's brother, Juan, was arrested in Dallas for stealing a car and evading arrest. Licho

went to the Texas State Fair and he met a girl named Erica Hernandez. Licho had been talking with her and seeing her.

In late October, 2001, Licho attended a graduation party for Michael Torres's cousin, Santos. Licho attended the party to have fun and had been talking with Jessica Garcia, a girl that he had ran into on several occasions. Licho did not plan on trouble at the party. He was with Frankie Hernandez and Jesus Montez. Licho and his friends got into an altercation with another group and shooting started. Santos and his parents were accidentally caught in the crossfire and Santos was killed. Quintan Alonza was eventually prosecuted for the murder. Quintan was at another party a few weeks after the shooting and was bragging on the DJ's microphone that he had killed Santos. Santos's cousin was at the party and heard it and called the police. Licho had been told that Michael Torres believed that Licho was also responsible for his cousin's death and had put out the word that there would be retaliation. There had been frequent threats and drive by shootings at the Escamilla house on Weisenberger and the family was fearful. Licho, at that time, was not living with the family on Weisenberger, but he was concerned about their safety. Licho felt they were in jeopardy because of the threats against him. Licho's brother, Juan, indicated in a letter:

We went to a house party that ended up in a shoot out (among) neighborhood rivals. Licho and Jose and myself had a bunch of people around the neighborhood trying to kill us.³⁹

According to Licho, on November 8, 2001, he was in the neighborhood working on a drug deal. He had stopped his car on Hammerly because he was text messaging someone about a "drug deal". While he was stopped doing that, Michael and three other guys, including Hector drove up and got out of the car. Michael Torres was shot that morning with several different eye witness stories about the events leading up to the shooting.

Licho was living at the Enclave Apartments in Arlington at the time. He returned home to get clothes and decided that he was going to have to go to Mexico or somewhere. He knew he was either going to be arrested by the police or killed by the friends and family of Michael

³⁹ Juan Escamilla Letter (Exhibit 8)